

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA

ORAL WHARWOOD and	)	
YVONNE WHARWOOD,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. 02-4616
	)	
DENNIS C. MATLACK and	)	
UNITED STATES POSTAL SERVICE,	)	
	)	
Defendants.	)	

**FEDERAL DEFENDANTS' ANSWER**

The United States of America, on behalf of Federal Defendants, United States Postal Service and Dennis Matlack, by and through its undersigned counsel, Patrick L. Meehan, United States Attorney for the Eastern District of Pennsylvania, and Patricia D. Gugin, Assistant United States Attorney for said District, answers Plaintiffs' Complaint in like numbered paragraphs as follows:

1. Admitted.
2. Admitted, with the further clarification that Mr. Matlack is not a proper defendant in this action.
3. Denied as stated. The United States admits that the United States Postal Service is an independent establishment of the Executive Branch of the United States Government, and that the mission of the Postal Service is to provide mail and postal services throughout the United States. Moreover, the Postal Service is not a proper defendant in this action.

4. Admitted.

5. Admitted only that an automobile accident involving Mr. Wharwood and Mr. Matlack occurred on that date on that road. All other allegations are denied.

6. The United States incorporates its responses to paragraphs 1 - 5 herein.

7. Denied.

8. Denied (including all subparts).

9. Denied (including all subparts).

10. Denied.

11. Denied.

12. Denied.

13. Denied.

The paragraph beginning with WHEREFORE sets forth Plaintiff's prayer for relief to which no response is required. To the extent this paragraph is deemed to contain allegations of material fact, it is denied.

All allegations not specifically responded to above are denied.

14. The United States incorporates its responses to paragraphs 1 - 13 herein.

15. The United States is without sufficient information to admit or deny the allegations of this Paragraph. Said allegations are therefore denied.

16. Denied.

The paragraph beginning with WHEREFORE sets forth Plaintiff's prayer for relief to which no response is required. To the extent this paragraph is deemed to contain allegations of material fact, it is denied.

All allegations not specifically responded to above are denied.

#### **AFFIRMATIVE DEFENSES**

##### **FIRST AFFIRMATIVE DEFENSE**

Plaintiffs' claim is diminished or barred by Pennsylvania laws regarding comparative negligence.

##### **SECOND AFFIRMATIVE DEFENSE**

Plaintiff Yvonne Wharwood failed to exhaust her administrative remedies.

##### **THIRD AFFIRMATIVE DEFENSE**

Plaintiff Yvonne Wharwood fails to state a claim upon which relief can be granted.

##### **FOURTH AFFIRMATIVE DEFENSE**

The Court is without subject matter jurisdiction over Plaintiff Yvonne Wharwood's claims.

##### **FIFTH AFFIRMATIVE DEFENSE**

Plaintiffs did not properly place the Agency on notice of one or more categories of damages that it now seeks to recover

from the Court. Pursuant to 28 U.S.C. § 2675 and 39 C.F.R. §912.8, the Plaintiff is barred from recovery for these items.

**SIXTH AFFIRMATIVE DEFENSE**

The Court does not have jurisdiction over defendants Matlack and the United States Postal Service. The United States is the only proper defendant.

**SEVENTH AFFIRMATIVE DEFENSE**

Pursuant to 28 U.S.C. § 2675, Plaintiffs are prohibited from claiming or recovering an amount against the United States in excess of that which was set forth in a claim presented to the United States Postal Service.

**EIGHTH AFFIRMATIVE DEFENSE**

Pursuant to 28 U.S.C. § 2674, Plaintiff is proscribed from recovering any amount for prejudgment interest against the United States of America.

**NINTH AFFIRMATIVE DEFENSE**

Under 28 U.S.C. §2412(d)(1)(A), Plaintiff cannot recover attorney's fees from the United States of America.

**TENTH AFFIRMATIVE DEFENSE**

Pursuant to 28 U.S.C. § 2402, Plaintiff is not entitled to a jury trial.

**WHEREFORE,** having fully answered all counts of the Complaint, the United States prays that Plaintiffs take nothing by way of their Complaint against it, that the same be dismissed, and that judgment be awarded in favor of Federal Defendants, together with costs and such other and further relief as the Court deems appropriate in this case.

Respectfully submitted,

PATRICK L. MEEHAN  
UNITED STATES ATTORNEY

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JAMES G. SHEEHAN  
Assistant United States Attorney  
Chief, Civil Division

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Federal Defendants' Answer was served this date by first-class United States mail, postage prepaid, on the following:

Brian McVan, Esquire  
162 South Easton Road  
Glenside, PA 19038

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PATRICIA D. GUGIN  
Assistant United States Attorney

Date: Sept. 11, 2002